Supreme Court, U.S.
FILED

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No. ____

In The

Supreme Court of the United States

October Term, 2002

Robert Mueller

Petitioner,

v.

Commissioner of Internal Revenue

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Robert Mueller
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Westmont, IL 60559-1620

Pro se

49PP

QUESTIONS PRESENTED FOR REVIEW

Homosexuals comprise approximately 10% of the population of the United States of America, yet they and their families have not been given recognition by Congress when formulating national legislation, including tax legislation. Although the purpose of tax legislation is primarily to fund the federal government, it is also used to encourage modes of behavior and economic actions. Exclusion implies that second-class citizenship for homosexuals is acceptable. That exclusion was further codified in the Defense of Marriage Act of 1996.

This case presents a claim that exclusion violates three principles of the United States Constitution – equal protection, separation of church and state, and cruel and unusual punishment. In addition, such exclusion is both a civil rights and a human rights violation that this Court is asked to rectify.

The United States Tax Court was asked to rule on the constitutionality of the Defense of Marriage Act as a violation of the principles aforementioned. It did not examine the questions the petitioner presented. The Court of Appeals for the Seventh Circuit has also avoided this issue. The Court of Appeals then applied rule 42(b) and (c) to suppress publication of the case and its decision. This Court is now asked to review those decisions based on the following:

Equal protection. Are homosexual Americans denied equal protection under the tax laws and other statutes of the United States of America? Homosexuals do form families. These families have a right to recognition and protection

QUESTIONS PRESENTED FOR REVIEW –Continued

under the laws of the United States of America. Without recognition of their families, homosexuals are required to pursue extraordinary methods for ensuring their families are provided for. These are steps heterosexual couples are granted through a single term – marriage. A similar status should be available to homosexuals.

Separation of church and state. Does failure to recognize homosexual partners violate the constitutional principles of separation of church and state? There is no rational basis for discriminating against homosexuals and their families. Many churches do so, but that is their right under the separation of church and state. However, the state does not have such a right to discriminate without providing a rational basis for such action.

Cruel and unusual punishment. Does failure to recognize homosexual partners as a family unit constitute cruel and unusual punishment? Many of the laws passed by the federal government are to aid in stability of the family unit, yet no such family unit is defined for homosexuals. Homosexuals are considered permanently single in the eyes of the law. This is cruel because it ignores the reality of homosexual lives, and it is unusual because it singles out 10% of the population.

Constitutionality of the Defense of Marriage Act. Is the Defense of Marriage Act constitutional? This act, although passed in 1996, represents attitudes of Congress for many years. It is just a bold step where Congress decided it could codify its discriminatory attitudes. This act should be reviewed within the framework of this case. A ruling on its

QUESTIONS PRESENTED FOR REVIEW –Continued

constitutionality is necessary to minimize the discriminatory undercurrents of its passage.

This document should be construed liberally under the teachings of Haines v. Kerner, 404 US 519 (1972).

LIST OF ALL PARTIES

Petitioner Robert Mueller is an individual presenting the case pro se. He is a citizen of the United States who has standing as a homosexual.

Respondent Commissioner of Internal Revenue is the federal office responsible for enforcement of the tax laws of the United States of America.

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Congressional Record of the House of Representatives, July 12, 1996 Appendix C

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PETITION FOR WRIT OF CERTIORARI

The Petitioner requests that the Supreme Court (a) exercise this Court's supervisory power with respect to the tax and appellate courts to review the United States Tax Court's ruling denying homosexual partners recognition and status equal to heterosexual marriage (Appendix a) and (b) issue a writ of certiorari to decide an important issue of federal law that should be examined by the Federal Courts of the United States of America.

JURISDICTION

Under 28 U.S.C. Sec. 1291, the Supreme Court of the United States shall have jurisdiction over decisions of Court of Appeals following all final decisions of the Tax Court of the United States. Final judgment was entered in this action by the Honorable John J. Pajak on October 10, 2001. On June 27, 2002, the Seventh Circuit Court affirmed that decision.

STATEMENT OF THE CASE

There are 15-30 million homosexuals in the United States, many of whom have families that are not recognized by the government of the United States of America. A better approximation is not known because Congress has refused to fund studies to find out how many people are homosexuals and how they are affected by the laws of the United States.

Under the Constitution of the United States, individuals are not allowed to sue Congress, so the group identified as homosexuals has limited recourse to the actions of that body. Surrogates such as the Commissioner of Internal Revenue must be used to approach the Courts to address issues of discrimination and unequal treatment. In Boy Scouts v. Dale, the Supreme Court held that private organizations can discriminate against homosexuals. This case asks whether public organizations like the United States Congress have the same right to discriminate.

The filing of a tax return has many more implications than merely determining how much money is transferred from an individual to the federal government. This form is how an individual identifies his/her family unit to the federal government.

At the close of 1996, Petitioner and his partner were living in Seattle, Washington. For that tax year, he and his partner filed a joint tax return. The words "married" and "spouse" were crossed out because other than local ordinances there was no allowance for homosexuals to achieve that status at either the state or the federal level. (Many efforts had been made by others in the past to gain a "married" or comparable status at the state level, but all had been rebuffed by the

"status quo".) The return was processed through Ogden, Utah, where no objections were raised. The 1997 tax booklet addressed both the Petitioner and his partner as equals. The objections were raised upon the Petitioner and his partner returning to the state of Illinois. (NOTE: In 2002 a collection letter from the IRS still addressed both parties as equals.)

The appeal was heard by the Seventh Circuit because the tax appeal was filed in Illinois. The Petitioner would have preferred the Ninth Circuit hear the appeal based on where the original documents were filed. The Seventh Circuit would incorrectly identify Illinois as providing the applicable law. This is one of the problems caused by the use of state law within federal tax law. The Seventh Circuit would have no idea of applicable laws in Seattle, Washington.

Judge Pajak ruled that homosexuals in the United States can only use single or head of household status when it comes to taxation, while heterosexuals have several additional options. Both the respondent and the Court cite the fact that the Petitioner was not married, knowing full well that such a status is not available to homosexuals. The Petitioner states that because the status is not available, de facto discrimination is being used to support the decision.

Heterosexuals are given a means by the federal government to document their families; homosexuals are not. Baehr V. Miike almost made Hawaii the first state to provide such recognition. An amendment to that state constitution was passed to prevent the Court's decision from taking effect. Baker v. State of Vermont made that the first state to grant homosexuals some form of documenting their families. California has since joined it, albeit in a different form. However, even those who get a document from a state are refused recognition at the federal level, and the Defense of

Marriage Act frees other government entities from recognizing this status also.

Tax Court Judges David Laro and John J. Pajak are to be commended for addressing the issues presented. Most of the Courts the Petitioner has dealt with try to avoid the issue (Seventh Circuit opinion, Appendix B). However, Judge Pajak's arguments are based on decisions that supported the status quo before society started evolving into acceptance and support for homosexuals. The status quo Congress is attempting to preserve when it passes laws like the Defense of Marriage Act is not as prevalent in American society as it was when marriage was first defined in the tax laws in the late 1940's.

The preamble of the charter of the United Nations contains these phrases:

> to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
>
> to promote social progress and better standards of life in larger freedom,
>
> to practice tolerance and live together in peace with one another as good neighbours,

Social progress, tolerance and fundamental human rights are what this case is about.

First, let us talk about equal protection. Equal protection does not apply only to currently identified "suspect classes". This statement is exemplified in recent affirmative action debates and recent equal protection cases like Saenz v.

Roe and Bush v. Gore. The petitioner does not seek to create another suspect class, although there is plenty of evidence to support the idea that homosexuals would qualify for such protection. Adding another group to the list is not the answer. We as a society must be open enough, mature enough, to judge primarily on merit and individual circumstances. That is how "social progress and better standards of life" will be achieved. "Equal protection" is the way it has been phrased in the United States Constitution.

Equal protection is violated in the tax laws when a Court can conclude that the appropriate filing status for homosexuals is single - period. The petitioner cited GAO/GGD-96-175, the report on single v. married taxpayers, which shows that neither single nor married status is always favorable. The petitioner concentrates on the fact that "married" people have options to choose how to deal with the favorable and unfavorable conditions. This case asks that those options be extended to homosexuals. Heterosexuals have the options to remain single, cohabitate, and marry. Homosexuals have the first two options; the federal government does not recognize the third option. Congress has in fact legislated against it or an equal option with the Defense of Marriage Act. The petitioner is pursuing the ideas presented in Braschi v. Stahl Associates, 74 N.Y.2d 201, 543 N.E.2d 49, 544 N.Y.S.2d 784 (1989):

> A more realistic, and certainly equally valid, view of a family includes two adult lifetime partners whose relationship is long-term and characterized by an emotional and financial commitment and interdependence

And from Seattle, Washington, city ordinance 117244:

> WHEREAS, significant changes in our society have resulted in the creation of diverse living arrangements and the development of an expanded concept of the family unit; and
>
> WHEREAS, many of these living arrangements involve long-term committed relationships of unmarried persons; and
> WHEREAS, the City of Seattle recognizes that families and other long term committed relationships foster economic stability and emotional and psychological bonds; and ...

And from the Surgeon General of the United States on June 28, 2001:

> Sexual orientation is usually determined by adolescence, if not earlier, and there is no valid scientific evidence that sexual orientation can be changed. Nonetheless, our culture often stigmatizes homosexual behavior, identity, and relationships. These anti-homosexual attitudes are associated with psychological distress for homosexual persons and may have a negative impact on mental health, including a greater incidence of depression and suicide.

Judge Pajak groups homosexuals with unmarried heterosexuals and extended families. This grouping is not supported by the reality of modern society. In adapting new standards for the health care industry, even the Health and

Human Services Department incorporated an American National Standards Institute standard, ANSI X12 837, Version 004010X096, May, 1999, that includes a separate relationship code for homosexual partners v. the other groups Judge Pajak cited. This is in response to the changes that have been happening in the private sector that Congress, as the leader of the public sector, has chosen to ignore.

Congress felt bold enough to codify discrimination against homosexuals in 1996 with the Defense of Marriage Act. The discrimination has been present for many years, but it has seldom been so openly demonstrated as in 1996. See Appendices C and D, excerpts from the Congressional Record from the debates on DOMA. In those debates, one can read about the Family and Medical Leave Act, where homosexual families were purposely excluded.

The use of the term "marriage" and "spouse" are sources of de facto discrimination against homosexuals, as Congress was well aware that no state had established a procedure for recognizing homosexual families. The Defense of Marriage Act grew out of a fear that Hawaii might establish such recognition, which could then spread to other states. (Hawaii went to the extent of amending its state constitution to redefine equal protection, but Vermont has since established civil unions as a "separate but equal" status within the state.) The DOMA definition has now found itself into recent tax laws. Targeted discrimination has been in the federal laws for a long time; the difference is now it has been openly codified. Therefore, the principle of equal protection is being violated.

Second, let us deal with the principle of separation of church and state. Even religious institutions in the United

States and throughout the world are confronting or being confronted with how homosexuals are treated. In the United States, because of the separation of church and state, heterosexuals who choose to have a religious ceremony must also have a secular document issued by the state to recognize their union (common law marriage being an exception). Homosexuals can find religious institutions to perform similar ceremonies, but only Vermont currently offers the secular document, and that is not recognized by the federal government.

The IRS, the Courts, and Congress know full well that most states still do not offer procedures for recognition of homosexual families. Congress, in passing the Defense of Marriage Act, endorsed continuation of this de facto discrimination. One only has to scan GAO/OGC-97-16 Defense of Marriage Act to get an idea of the harm caused by use of the current definition of "married" and "spouse". And as one reads the Congressional Record, several legislators cite religious reasons for their positions. Because of the principle of separation of church and state, a rational basis and a valid governmental interest must be provided when classifications cause harm. There is no rational basis and there is no valid government interest in discriminating against homosexuals; in fact, the exact opposite is true. Non-discrimination is an ideal of this country, yet, in dealing with 10% of the population, it is now codified discrimination.

Finally, let us deal with the issue of cruel and unusual punishment. The best estimates are that homosexuals comprise 5-12% of the population of the United States. Congress has on several occasions been asked to do studies, most recently during the DOMA debates, but it has continually denied funding for such a study. Appendices C

and D show that Congress is aware of the issue, but it refuses to examine it further. The Defense of Marriage Act is a cruel act because it refuses to consider the idea that homosexuals have families. Think of how often one hears the term "family" during a political campaign. Now think about being a homosexual with a partner who knows that the term does not apply to him/her. Is there anything crueler than not recognizing one's family? And now it is codified at the federal level against 10% of the population; unusual, yes.

Taxes are used to fund support for families for both current and future needs. Because homosexuals do not have a mechanism for gaining government recognition of their families, they must find means to identify their families that heterosexuals do not need when they "marry". From Romer v. Evans (116 S.Ct. 1624),

> the protection of general laws and policies that prohibit arbitrary discrimination in governmental and private settings
> In any event, even if, **as we doubt,** homosexuals could find some safe harbor in laws of general application.

In theory, Congress was trying to correct a valid problem with the Defense of Marriage Act. Until that act, state law was the sole determination of the definition of "marriage", "married", and "spouse", throughout federal law, including tax law. This violates many Constitutional principles. Recent Supreme Court rulings in Saenz v. Roe, redefined the principle of state-to-state movement – violated by use of state law; and Bush v. Gore talks about uniform-standards as a requirement for equal protection. The Defense of Marriage Act would have been a step in the right direction

had it established a national standard for homosexual as well as heterosexual families. In reality, it did neither, re-endorsing this vague idea of a legal union "between one man and one woman" as husband and wife. The definition of legal union is missing, so even if the discriminatory nature of the law were not present, the law would be dismissed as vague and ineffective.

DOMA further violates another of the key points in Saenz v. Roe, the principle that cost is not a valid reason for denial of equal protection. Yet cost and religious reasons are the two major reasons given in the Congressional Record for refusing to recognize homosexual families. This further substantiates the Constitutional violations the petitioner presents – equal protection, separation of church and state, and cruel and unusual punishment.

REASONS FOR GRANTING THE PETITION

Judge Pajak in his decision states "(petitioner) is homosexual." The Petitioner has been so identified by many federal courts, being no stranger in challenging the stance of the federal government to this group. Twenty years ago this would have been a demeaning accusation. Through the evolution of society, that means only that petitioner has standing.

Several state cases have taken on the issue of homosexual partnerships. In re Kowalski, 478 N.W. 2d 790, Minn. App (1991), where guardianship of an auto accident victim was given to the partner over the parents. Baehr v. Miike, No. 91-1394, First Circuit Court, State of Hawaii, was the case that prompted Congress to pass the Defense of Marriage Act because Hawaii almost became the first state to recognize homosexual unions. Crawford v. City of Chicago, 1-98-0920, State of Illinois, Appellate Court, Fifth Division, deals with domestic partner benefits offered by a governmental body. My partner has a drug addiction for which he recently went through a rehabilitation program. This treatment was made possible because the company I work for offers domestic partner insurance to its employees.

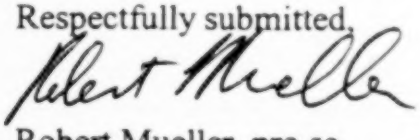
Appendix E is a letter from Petitioner's current employer regarding those benefits. In addition to GAO/OGC-97-16 Defense of Marriage Act, this provides "real world" evidence of the harm and unequal treatment homosexual families must deal with on a daily basis. We are not talking small numbers. We are talking approximately 25 million Americans who do not feel free to support their friends and

families because they fear repercussions from work, associates, and government.

This is not a unique issue for the United States of America. This is an issue that much of the world is starting to deal with. Unfortunately, the United States has chosen to deal with it by passing the Defense of Marriage Act. This law would be considered frivolous if it were not for the discrimination behind its enactment. The Court is requested to void the law, preferably with a suggestion that the law be re-enacted with a clause that supports homosexuals as well as heterosexuals.

The United States needs to be a leader in human rights throughout the world. The treatment of homosexuals is an area where we are currently failing. The petitioner can only offer the Courts the opportunity to review and rectify the situation. As former Chief Judge Richard Posner of the Seventh Circuit writes in his book Sex and Reason, homosexuals and their families deserve equal treatment and recognition; we just won't call it marriage.

Respectfully submitted,



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Appendix A

T.C. Memo, 2001-274

UNITED STATES TAX COURT

ROBERT MUELLER, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 4743-00 Filed October 10, 2001

Robert Mueller, pro se.

Jennifer L. Nudding, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

PAJAK, Special Trial Judge: Respondent determined a deficiency of $8,712 in petitioner's 1996 Federal income taxes. Unless otherwise indicated, section references are to the Internal Revenue Code in effect for the year in issue.

After concessions by petitioner, the sole issue we must decide is whether petitioner is entitled to a filing status other than single with respect to his 1996 tax return because of his long-term economic and personal relationship with Mr. Todd Bates.

Respondent determined that petitioner had unreported Schedule C, Profit or Loss From Business, income $48,234,

that his wage income was decreased by $48,325 (the one dollar difference is unexplained), that his self-employment tax deduction was $3,408. Respondent also determined that petitioner was entitled to a $4,000 standard deduction for single filing status, thereby increasing taxable income by $2,700 ($6,700 for married individuals filing joint returns, minus $4,000), and allowed him a dependency exemption with respect to Mr. Bates. Respondent determined that the tax table, single, was applicable to determine petitioner's tax.

FINDINGS OF FACT

Some of the facts in this case have been stipulated and are so found. Petitioner resided in Downers Grove, Illinois, at the time he filed his petition.

Robert Mueller (petitioner) is homosexual. In 1989, petitioner began a relationship with Mr. Bates.

Petitioner did not apply for nor receive a marriage license or certificate from the State of Illinois from 1989 through 1996. Petitioner did not register a marriage with the State of Illinois during the years 1989 through 1996. Petitioner was not married to anyone from 1989 through 1996.

Petitioner timely filed a federal income tax return for 1996 bearing his name and the name of Mr. Bates. Mr. Bates also signed the 1996 return on the line under petitioner's signature labeled "Spouse's signature". Petitioner struck out the word "Spouse's" on that line.

Petitioner listed his own name on the first line of the label of the 1996 return. Petitioner listed the name "Todd W. Bates" on the second line of the label of the 1996 return.

Petitioner struck out the word "spouse's" twice in the label block of the 1996 return.

On the 1996 return, petitioner marked filing status 2, line 2, and struck out the word "Married" on that line so that it read "filing joint return". Petitioner claimed an exemption for a "Spouse" on line 6b of the 1996 return. On line 34 of the 1996 return, petitioner claimed a standard deduction in the amount of $6,7000 based upon his claimed filing status of "filing joint return". Petitioner utilized married, filing jointly tax rates in determining his 1996 tax.

All the income reported on the 1996 return was earned by petitioner. Petitioner performed services as a computer consultant during 1996 for the University of Chicago Hospitals, Phamis, Inc., and Northwest Community Hospital. Mr. Bates was unemployed in 1996. The 1996 return does not reflect any income earned by Mr. Bates.

OPINION

Petitioner is no stranger to this Court. Petitioner received an adverse ruling on the very issue before us for his earlier taxable years 1986 through 1995 in Mueller v. Commissioner, T.C. Memo. 2000-132 (Mueller I), affd. without published opinion 87 AFTR 2d 2001-2052, 2001-1 USTC par. 50,391, (7th Cir. 2001).

The basic difference between Mueller I and this case is that the Defense of Marriage Act (DOMA), Pub. L. 104-199, 110 Stat. 2419 (1996), was in effect during 1996, the year in issue and was not in effect for the earlier years in Mueller I. DOMA sec. 2, 110 Stat, 2419, provides that no State, territory, U.S. possession or Indian tribe is required to give effect to any public act, record or judicial proceeding of another such

organization with respect to a relationship between persons of the same sex that is treated as marriage under the laws of such other organizations or a right or claim arising from such relationship. DOMA sec. 3, 110 Stat. 2419, provides that in determining the meaning of any Act of Congress, any ruling, regulation, or interpretation of the U.S. administrative bureaus and agencies, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife. Petitioner does not claim he was married in 1996 under the laws of any State. In fact, he is admittedly unmarried. Thus, DOMA effects no change in the law otherwise applicable in this case.

Section 6013 provides that a "husband and wife" may make a single return jointly of income taxes. Petitioner does not purport to be a husband or a wife. Accordingly, petitioner does not qualify under section 6013 as a person entitled to file a joint return. He points to no other section of the Internal Revenue Code which would allow him to file a joint return. Petitioner like any unmarried person, whether heterosexual or homosexual, falls into the category of "Unmarried Individuals (Other Than Surviving Spouses and Heads of Household)" under section 1©. This is the status referred to as "Single" on the Form 1040, U.S. Individual Income Tax Return.

During the trial, petitioner acknowledged that in Mueller I, this Court considered virtually every single aspect of his case. In light of petitioner's admission about Mueller I, we refer merely to a few aspects of that opinion.

In Mueller I, this Court held that the tax code's distinctions between married taxpayers and unmarried economic partners were constitutionally valid. Similarly, the

Court of Appeals for the Seventh Circuit, to which an appeal of this case would lie, has held that taxing married couples and singles differently does not violate the Constitution. Barter v. United States, 550 F.2d 1239, 1240 (7th Cir. 1977) (per curiam). In affirming Mueller I, the Court of Appeals for the Seventh Circuit reiterated the holding of Barter and stated that Mueller (petitioner here) offered no reason why that analysis did not control in the case before it. Mueller v. Commissioner, 97 AFTR 2d 2001-2052, 2001-1 USTC par. 50,391 (7th Cir. 2001), affg. T.C. Memo. 2000-132. In Mueller I, the Tax Court referred to the holding in Kellems v. Commissioner, 58 T.C. 556 (1972), affd. 474 F.2d 1399 (2d Cir. 1973), that the classification between married and single taxpayers is founded upon a rational basis and was a permissible attempt to account for the greater financial burdens of married taxpayers and to equalize geographically their tax treatment. In Mueller I, the Tax Court also observed that whether policy considerations warrant narrowing of that gap between the tax treatment of married taxpayers and homosexual and other nonmarried economic partners is for Congress to determine in light of all relevant legislative considerations. We agree with all of these statements which answer petitioner's pertinent contentions.

To the extent we have not addressed any of petitioner's contentions, we have considered them and find them to be without merit.

For all the foregoing reasons, we sustain respondent's determination.

Decision will be entered for respondent.

Appendix B

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 26, 2002*
Decided June 27, 2002

Before

Hon. WILLIAM J. BAUER, Circuit Judge

Hon. KENNETH F. RIPPLE, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

No. 02-1189

ROBERT D. MUELLER
Petitioner-Appellant
v.
COMMISSIONER OF INTERNAL REVENUE
Respondent-Appellee

Appeal from the
United States Tax Court
No. 4743-00

John J. Pajak,
Special Trial Judge

B-2

ORDER

Upon learning that Robert Mueller had underpaid his income taxes for 1996, the IRS issued a deficiency notice that required him to pay the $8,712 due the government. Mr. Mueller petitioned the Tax Court for a redetermination of the unpaid tax, and after a one-day trial the court upheld the calculations in the deficiency notice. Mr. Mueller appeals, and we affirm.

In preparing his tax return for 1996, Mr. Mueller attempted to file jointly with his partner, Mr. Todd Bates. Involved in an intimate relationship with Mr. Bates since 1989, Mr. Mueller believes that he and Mr. Bates should be allowed to file a joint return like married couples. Therefore, on his 1996 tax return Mr. Mueller listed Mr. Bates' information in the blank designated for his spouse's name and social security number but struck the word "Spouse" from the label. He also marked the box that indicated his filing status as "Married filing joint return," although he struck the word "Married" from that label as well. Mr. Mueller completed the rest of the form, listing his income and applying the "married filing jointly" deduction, which was much larger than the standardized deduction for a single person. Both men signed and dated the form, which Mr. Mueller then filed with the IRS.

During his brief trial in the Tax Court, Mr. Mueller testified on his own behalf and tried to persuade the court that homosexuals are being taxed in violation of the Equal Protection Clause. He argued that because of this inequity the Tax Court should declare the Defense of Marriage Act, Pub L. 104-199, 110 Stat. 2419 (1996), unconstitutional. The court rejected Mr. Mueller's arguments and entered judgment in favor of the IRS.

This is not the first time we have encountered Mr. Mueller and his equal protection arguments. Just last year, Mr. Mueller appealed a similar Tax Court decision pertaining to tax years 1986-1995, and in that appeal he raised an identical challenge to the Defense of Marriage Act. See Mueller v. Comm'r, No. 00-3587, 2001 WL 522388 (7th Cir. April 6, 2001) (unpublished order). We rejected his argument because the Defense of Marriage Act was not in effect during the tax years at issue there.

Although Mr. Mueller is correct that the Act was effective during 1996, the tax year at issue in this appeal, the statute had absolutely no bearing on his filing status. The Defense of Marriage Act presumptively denies federal recognition of same-sex marriages should any state choose to recognize such unions. See 28 U.S.C. section 1738C. But as the Commissioner argues, Mr. Mueller did not try to have his same-sex relationship recognized as a marriage under Illinois law, and thus the Defense of Marriage Act was not implicated. Instead Mr. Mueller's filing status depended only on whether he was legally married under Illinois law at the close of tax year 1996, see 26 U.S.C. section 7703; 26 CFR section 1.7703-1; see also Estate of Steffke v. Commissioner, 538 F.2d 730, 733 (7th Cir. 1976), which he admitted he was not. Therefore, the constitutionality of the Defense of Marriage Act is irrelevant.

Furthermore, Mr. Mueller provided no evidence to discredit the Commissioner's calculation of the deficiency, which enjoys a presumption of correctness. See Welch v. Helvering, 290 U.S. 111, 115(1933); Pittman v. Commissioner, 100 F.3d 1308, 1313 (7th Cir. 1996). We remind Mr. Mueller once again that despite his personal dissatisfaction with the current tax laws, he does not have

license to ignore them. We also warn Mr. Mueller that if he continues to file frivolous tax appeals, he faces the possibility of sanctions. See Fed. R. App. P. 38; Cir. R. 38; see also Cohn v. Comm'r, 101 F.3d 486 (7th Cir. 1996) (per curiam).

AFFIRMED.

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* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. App, P. 34(a)(2).

Appendix C

United States House Of Representatives

July 12, 1996

H7481

This Act may be cited as the "Defense of Marriage Act."

I would have preferred the enactment of a domestic partner law. It would have provided all the protections that gays and lesbians have been seeking over the years. Failure of the State to assure gays and lesbians all the protections under the law require that we pass a domestic partner law. Unfortunately the State of Hawaii Legislature chose not to pass a domestic partner law and in doing so left the matter for the courts to decide.

Under this bill, H.R. 3396, same sex marriages, if and when allowed in Hawaii, will be denied equal protection of the laws insofar as the Federal Government is concerned. Even though it is a valid marriage in Hawaii as decided by the Hawaii Supreme Court, these couples will not be allowed to be considered as "spouses" when deciding such things as Federal retirement benefits, health benefits under Federal programs, Federal housing benefits, burial rights, privilege against testifying against partner in Federal trials, visitation rights at hospitals by partners, rights to family and medical leave to care for a partner, and many more programs which allow special rights to spouses. This exclusion would be extremely destructive of the principle of States rights in determining status.

H7482

As people understand, given today's rule, Federal law has a lot to do with their lives, so as far as Federal income tax is concerned and Social Security and pensions and other things, they will not be covered.

H7483

What people have said is, can I regularize this relationship so we are legally responsible for each other. Can I get to the point where if one of us gets very ill we will be protected in out ability to undertake financial responsibilities? Can we buy property jointly? Can we do the other things that people do? Can we decide that one will work and one might be in child rearing; there are people who have children in these relationships. That is what we are asking for.

When people get off the subject, allowing Hawaii to have gay marriages without penalizing them federally, and on to something wholly unrelated, polygamy, and attack the unrelated one, it is because they cannot think of any arguments to attack the first one.

H7484

But scapegoating gay men and lesbians for the failure of marriages in this society is very good politics but very terrible social analysis. That is what we are talking about.

The Federal Government currently extends benefits,

rights, obligations, and privileges on the basis of marital status. These include Social Security survivor and Medicare benefits, veterans' benefits, Federal health, life insurance and pension benefits and immigration privileges.

In fact, **the word marriage appears more than 800 times in Federal statutes and regulations, and the word spouse appears over 3,100 times.** However, these terms are never defined in the statutes and regulations. This bill proposes to do so.

H7486

I have been thinking a lot about this legislation this week because tomorrow, I am getting married. My fiance and I are going to vow to spend the rest of our lives together – no matter what lies ahead. For that commitment, we will enjoy all the rights and privileges the Government bestows on married couples – from tax breaks to Social Security benefits.

H7487

They are outraged that their tax money could be spent paying veteran's benefits or Social Security based on the recognition of same-sex marriages.

H7488

and if Members believe that the Congress of the United States of America and not an individual State has the authority and the sole jurisdiction and responsibility to decide the use of Federal taxpayer benefits, and if you do not believe it is fiscally responsible to throw open the doors of the U.S.

Treasury to be raided by the homosexual movement, then the choice is very clear, oppose the Frank amendment.

H7491

And that is, whether Members like to hear it or not, the last unfinished chapter of civil rights in this country.

It is an attempt to evade the basic question of whether the law of this country should treat homosexual relationships as morally equivalent to heterosexual relationships. That is what is at stake here.

Should the law express its **neutrality** between homosexual and heterosexual relationships? Should the law elevate homosexual unions to the same status as the heterosexual relationsjips on which the traditional family is based, a status which has been reserved from time immemorial for the union between a man and a woman.

Unfortunately, this bill went far beyond that simple affirmation, entering uncharted and very troubling constitutional territory, as well as being motivated on the part of some of its advocates by a gratuitous hostility toward gays and lesbians. At best, it is unnecessary – for reasons I'll explain later; at worst, it is dangerous – for reasons I'll explain.

H7492

I also recognize that gay and lesbian couples seek legal recognition and permanence for their relationships and the

rights and responsibilities that flow from those relationships. I hope this society, and its political and legal institutions, can move to accommodate the legitimate needs of gay and lesbian citizens in this respect. No one, I believe, would want, for example, to deny a claim of inheritance, or of participation in terminal health care decisions, for the life-long partner of a gay man or a lesbian woman. **Yet, by refusing as part of this legislation even to permit a formal study of disparate treatment of domestic partnerships in these areas,** the proponents of this legislation may reveal their real motivation.

and because so many advocates of this legislation, by their approach, seem primarily moved to demonstrate a gratuitous disrespect for some citizens based on their sexual orientation.

H7493

Federal policies could be dramatically affected by the Hawaii decision since the Federal Government generally recognizes State documents in granting benefits and privileges to married individuals. Veterans' benefits, labor policies, Federal health and pension benefits, and Social Security benefits are just a few of the areas that would be subjected to substantive revision if Congress does not act soon. **I think it would be wrong to take money out of the pockets of working families across America and use those tax dollars to give Federal acceptance and financial support to same-sex marriages.** Without the passage of the Defense of Marriage Act, this would be the case.

H7495

Unless this bill is passed establishing a Federal definition of marriage, all Americans will then be paying for benefits for homosexual marriages.

H7497

Mr. Chairman, the so-called Defense of Marriage Act should really be called the Republican Offense on People Who are Different Act because it is nothing more than blatant homophobic gay-bashing.

H7499

The fact of the matter is, Mr. Chairman, it is the prerogative, the authority, the responsibility, and **the sole jurisdictional power** of the Congress of the United States to determine the reach of Federal laws, Federal benefits, Federal regulations.

H7500

it will not have Federal tax benefits; it will not have pension benefits; it will not have testimonial privilege.

Appendix D

United States Senate

September 10, 1996

S10101

I believe we should not wait around to find out. What the Hawaiian court decides could also affect the operations of the Federal Government. It could have an impact upon programs like Medicare, Medicaid, veterans' pensions, and the Civil Service Retirement System.

S10102

In fact, States and local governments across the country are already dealing with this issue in their own ways. Some have enacted domestic partnership laws. In others, mayors and Governors have issued executive orders for public employers. They don't need help from Congress to address the subject. And Federal law, which has never recognized same-sex marriages, hardly needs clarification at this suspicious moment.

In his testimony, Professor Sunstein emphasized that the Supreme Court's recent opinion in Romer versus Evans, striking down an anti-gay referendum in Colorado, also casts doubt on the validity of this bill. Like the Colorado referendum struck down in Romer, this bill is "unprecedented * * * an oddity in our constitutional tradition drawn explicitly in terms of sexual orientation. Insofar as it draws the

particular line that it does, it risks running afoul of Romer's prohibition on laws based on animus against homosexuals."

S10103

Another reason this bill is needed now concerns Federal benefits. The Federal Government extends benefits, rights, and privileges to persons who are married, and generally it accepts a State's definition of marriage. This bill will help the Federal Government defend the traditional and commonsense definitions of the American people. Otherwise, if Hawaii or any other state, gives new meaning to the words "marriage" and "spouse", reverberations may be felt throughout the Federal Code.

The provisions of the Federal law do not, of course, regulate only the activities of the Federal Government. Federal law also regulates private persons. Consider the implication of the Family and Medical Leave Act of 1993.

Shortly before passage of this act in the Senate, I attached an amendment that defines "spouse" as "a husband or wife, as the case may be." **When the Secretary of Labor published his proposed regulations, a considerable number of comments were received urging that the definition of "spouse" be broadened to include domestic partners in committed relationships. However, when the Secretary issued the final rules, he stated that the statutory definition of "spouse" and the legislative history of the act precluded such broadening of the definition.**

S10104

Also, it says for Federal benefits and Federal benefits purposes, we define marriage as a legal union between male and female, and we define spouse as a member of the opposite sex.

S10105

The Supreme Court subsequently acted, and here we are faced with the exact same arguments, the very same arguments being made against domestic relations of another order. When two people decide to come together, it seems to me it should be a matter for them, their conscience, their God, and indeed that is, indeed, is inappropriate to intervene in that decisionmaking.

As Dr. King stated so eloquently years ago, our Declaration of Independence was not just a matter of rhetoric and not an exercise in hypocrisy and not just words trotted out on suitable patriotic occasions, and then ignored while we go about the business of real life. **Dr. King knew that our Declaration of Independence was indeed a "declaration of intent," and that our history has been a history of making progress, albeit sometimes in fits and starts, but making progress toward full implementation of those American values for all of us.**

And that we allow, in the final analysis, for the opportunity of every American to enjoy the same protections under the law as every other American and that we do not single out gay and lesbian Americans for second class status and as second class citizens by legislation specifically to their

domestic relations when we have never legislated in that area before in this body.

S10106

A failure to pass this bill, if the Hawaii court rules in favor of same-sex marriages, will create, through the full faith and credit provision of the Constitution, a whole group of new beneficiaries – no one knows what the numbers would be – tens of thousands, hundreds of thousands, potentially more – who will be beneficiaries of newly created survivor benefits under Social Security, Federal retirement plans, and military retirement plans. It will trigger a whole group of new benefits under Federal health plans. And not only will it trigger these benefits for the Federal Government, but under the full faith and credit provision of the Constitution, it will impose – through teacher retirement plans, State retirement plans, State medical plans, and even railroad retirement plans – a whole new set of **benefits and expenses which have not been planned or budgeted for under current law.**

S10107

Obviously, the results of this bill will not be to preserve anything, but will serve to attack a group of people out of various motives and rationales, and certainly out of lack of understanding and a lack of tolerance, and will only serve the purposes of the political season.

S10108

In the past few years, legislative attacks on gay people have increased in frequency and scope, Trying to keep gay men and women out of the armed services. Trying to keep AIDS educational materials free of any mention of homosexuality. Trying to take away the children of gay parents.

This bill does not bring people together. In fact, it does the exact opposite. It divides Americans. **It is a stark reminder that all citizens who play by the rules, who pay their taxes and who contribute to the economic, social and political vibrancy of this great melting pot do not have equal rights.**

S10110

The impact of the case, and in other areas of governmental action adversely affecting gays, cannot be clearly discerned. Despite the Court's use of the rational basis standard, the opinion appears to view with skepticism the differential treatment of homosexuals as a class. At the least, we can say that the case requires the DOMA, if it becomes law, to be evaluated under the equal protection clause. That evaluation need not be fatal to the law. The proposal does adversely classify homosexuals as a class in defining what status, under the full faith and credit clause, States must accord.

S10111

As I am sure my colleagues are aware, although many other Americans may not be, the Federal Government extends certain benefits and privileges to persons who are married

Indeed the word "marriage" appears in more than 800 sections of the Federal statutes and regulations, while the word "spouse" appears more than 3,100 times.

Moreover. I urge my colleagues to think of the potential cost involved here. How much is it going to cost the Federal Government if the definition of "spouse" is changed?

I do not think, though, that it is inconceivable that the costs associated with such a change could amount to hundreds of millions of dollars -- if not billions – of Federal taxpayer dollars.

S10112

I believe it is about hurting a whole group of people for absolutely no reason whatsoever. No one group in this country that fights for fairness for gays and lesbians has asked us to legalize gay marriage here in the U.S. Senate. **Not one Member of the House or Senate is proposing a bill that would legalize gay marriage or give benefits to domestic partners.**

S10115

The Defense of Marriage Act does not prevent same-sex marriages at the State level; it merely defines marriages for Federal purposes, **thereby establishing legal certainty and uniformity in federal benefits, rights and privileges for married persons**.

S10116

Though this bill is short in length – just 2 ½ pages in fact – it is long in substance.

Since the word "marriage" appears in more than 800 sections of Federal statutes and regulations, and the word "spouse" appears more than 3,100 times, Federal benefits, such as Veterans, Health and Social Security, would all be subject to revision. Given the budget difficulties we are currently facing, it would be an understatement to say that this could have an enormous financial impact on our country. This troubles me deeply.

S10117

In addition, marriage most certainly should not be just another means of securing government benefits. Yet this is one of the arguments that proponents of same-sex marriage use to justify this unprecedented social experiment. They claim that laws restricting marriage to persons of the opposite sex are discriminatory in part because, after all, same-sex partners are not entitled to health and other benefits extended to dependent spouses. I can think of few worse reasons for

getting married. And I can think of few worse times to talk about creating another entitlement to government benefits.

S10119

It should come as little surprise that, like anyone else, gay men and women would like to live their lives without being defined only by their sexual orientation.

S10122

But homosexuality has existed throughout human history. And even though medical research hasn't succeeded in telling us why a small but significant number of our fellow human beings have a different sexual orientation, the clear weight of serious scholarship has concluded that people do not choose to be homosexual, any more than they choose their gender or their race. **Or any more than we choose to be heterosexual.**

Most Americans accept the basic tenet that discrimination for any reason is wrong. We grow uncomfortable, however, with some of its implications. **The question we face now is whether that discomfort warrants continued discrimination.**

S10123

But we have to remember today that government has a role only in the civil institution, separate and distinct from marriage as a religious ceremony.

And, Mr. President, when that civil institution is separated from a religious ceremony, and that civil institution is recognized by a sovereign State, then denying Federal recognition of that union amounts to nothing short of indefensible discrimination.

BUT WE'VE MADE THE GREATEST STRIDES FORWARD WHEN INDIVIDUALS, FACED WITH THEIR MOMENT IN HISTORY, WERE NOT AFRAID TO ACT.

President Lyndon Johnson often said, "It's not hard to do what's right, it's hard to know what's right."

S10124

Supporters of DOMA say a Federal definition of marriage is needed because Federal benefits are at risk. This is making a mountain out of a mole hill. Even if the same percentage of homosexual Americans were married as heterosexual Americans, 40 percent, the threat to the Treasury would be modest. Approximately 5 percent of the population is gay or lesbian. Therefore, we are only talking about 2 percent of the population that could possibly benefit if same sex marriages were recognized. **Further, Congress can choose to exclude same-sex partners from any Federal benefit it chooses, as we did with the family and medical leave legislation.**

Not once has a gay or lesbian Oregonian come to me and asked that the Federal Government endorse their lifestyle.

THE CONSTITUTION DOESN'T GIVE CONGRESS OR THE STATES THE POWER TO SPECIFICALLY EXCLUDE AN INDIVIDUAL OR GROUP OF INDIVIDUALS FROM THE ENJOYMENT OF LIFE, LIBERTY, OR THE PURSUIT OF HAPPINESS.

S10125

At the same time there are many partners of same-sex relationships who have loving and committed relationships over many years. The question arises, how do we acknowledge the existence of these committed relationships – the partner's desire to be at the bedside of his or her dying partner or to see that a partner receives the benefits that accrue to a survivor of a long and loving relationship.

One might point out that the only way we can do that now is through marriage. **There ought to be another way,** and I am prepared to look for that other way, but I do not see marriage as flexible enough an institution to accept such recognition at this time. Too many people in too many places of too many faiths see it as the state that exists between a man and a woman, and they see same-sex marriages as an incomprehensible trespass.

Appendix E

The
University
Of Chicago
Hospitals

Date: November 13, 2000

To: Mr. Robert Mueller

From: Mary Ann Nolan
Director, Benefits

Re: Domestic partner Health Plan Benefits

You and your domestic partner are currently enrolled in the Hospitals' health plan. We have recently reviewed the Internal Revenue Code regulations on taxation of domestic partner benefits and have determined that both the employee and employer premiums are subject to taxes.

Currently, you do pay tax on the employee portion of the premium, attributed to the addition of your domestic partner, by deducting it on an after tax basis. But, you do not currently pay taxes on the Hospitals' portion of the premium. You will now be required to do so.

The amount that will now be taxed is equal to the difference between the Hospital's premium for single and family coverage. For calendar year 2000, you will have to pay taxes

on $2,971.92 (this amount will be added to your gross income).

Payroll will automatically deduct the appropriate Social Security (FICA) tax. Youo will have two options to pay the additional federal and state taxes. You may have the taxes deducted over the remaining payperiods of this calendar year; or you may make the adjustment when you file your 2000 tax return. If you wish to have additional taxes deducted this calendar year, please complete the attached form and submit it to the Payroll Department, room W04.

As of January 1, 2001, the Hospitals will apply the appropriate taxes for your domestic partner benefits on a quarterly basis.

If you have any questions, please call me at extension 2-0203.

Enclosure